NO. 80-1730

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In the Supreme Court of the United States

October Term, 1981

GILES M. LUGAR

Petitioner

v.

EDMONDSON OIL COMPANY, INC.

and

RONALD L. BARBOUR

Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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Petition for Certiorari filed April 6, 1981
Certiorari Granted June 15, 1981

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RELEVANT DOCKET ENTRIES

	RECORD NUMBER
Plaintiff's Complaint - (Filed Feb. 8, 1978) (With Exhibits)	None. No listing made by Clerk of District Court
Defendants' Motion to Dismiss - (Filed March 10, 1978)	
Memorandum Opinion & Order (Filed July 17, 1978)	
Notice of Appeal - (Filed August 18, 1978)	
Opinion of United States Court of Appeals for the Fourth Circuit (Decided January 3, 1981)	
Judgment of United States Court of Appeals for the Fourth Circuit (Filed January 9, 1981)	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

GILES M. LUGAR
Plaintiff

v.

EDMONDSON OIL COMPANY, INC.
and
RONALD L. BARBOUR
Defendants

COMPLAINT
78-0020

1. Ronald L. Barbour is sole stockhold (sic), President of and an employee of Edmondson Oil Company, Inc.

2. Jurisdiction of this court is claimed under §1331 and §1343, Chapter 28, U.S.C. and §1983, Chapter 42, U.S.C., and the amount in controversy exceeds $10,000.00.

3. On April 1, 1977, Ronald L Barbour, acting for himself and for Edmondson Oil Company, Inc. filed a petition for attachment against Giles M. Lugar and others in the office of

the Clerk of the Circuit Court of Pittsylvania Count, Virginia. This attachment was filed under the authority of what is now Chapter 20, Code of Va., §§8.01-533, et. seq. (a copy thereof is filed as Exhibit A).

4. On April 1, 1977, the Clerk of the Pittsylvania County Circuit Court issued the Attachment Order commanding the Sheriff of Pittsylvania County, Virginia to attach and levy upon the property of Giles M. Lugar found in Pittsylvania County, Virginia (a copy of this order is filed as Exhibit B). The Clerk was acting under the provisions of what are now §§8.01-540 and 8.01-541 of the Code of Va.

5. The Sheriff of Pittsylvania County acting under the Attachment Order, did levy on and attach the property of Giles M. Lugar on April 1,

1977, April 2, 1977, and April 4, 1977, (a copy of the Sheriff's return is attached as Exhibit C).

6. Prior to filing its Petition for Attachment and the levy and attachment by the Sheriff, neither Edmondson Oil Company, Inc. nor Ronald L. Barbour filed a bond, nor did they file any security to protect the levy and attachment.

7. At no time prior to the Sheriff being ordered to levy upon and attach the properties of Giles M. Lugar did Edmondson Oil Company, Inc. or Ronald L. Barbour establish before a Judicial Officer a factual basis of the need to resort to this remedy as a means of preventing removal or disruption of assets.

8. The attachment ordered the Sheriff to summons Giles M. Lugar to

appear in the Circuit Court of Pittsylvania County at 9:00 a.m., April 18, 1977.

9. The first judicial hearing on the attachment was conducted on April 19, 1977. The court order as a result of this hearing was not entered until May 4, 1977, thirty-four days after the attachment.

10. The Petition for Attachment (Exhibit A) sworn to by Ronald L. Barbour for Edmondson Oil Company contains only conclusory allegations.

11. The Clerk of the Circuit Court of Pittsylvania County, Virginia, and the Sheriff of Pittsylvania County, Virginia, are constitutional officers whose duties are mandated by the Constitution and laws of the State of Virginia.

12. By order entered May 4, 1977,

a copy of which is attached as Exhibit D, the Circuit Court of Pittsylvania County, Virginia, held that Edmondson Oil Company, Inc. had presented no evidence sufficient to establish the ground for the attachment and had failed to bear its burden of proof; ordered that the attachment be dismissed, and ordered that monies held by a receiver be paid to Mr. Lugar.

13. At all times alleged herein, Ronald L. Barbour and Edmondson Oil Company, Inc. were willing participants with the State of Virginia; and Edmondson Oil Company, Inc. and Ronald L. Barbour and were acting under color of state law.

14. Giles M. Lugar has been deprived of his property by state action without due process of law as guaranteed under the Fifth and Fourteenth Amendments

to the United States Constitution.

15. The actions described herein of Edmondson Oil Company, Inc. and Ronald L. Barbour, acting under color of state law, deprived Giles M. Lugar of his right of due process in violation of §1983, Title 42, U.S.C.

16. As a result of the deprivation of his right of due process, Giles M. Lugar has suffered loss of his business assets, incurred judgments against the business and himself personally, has had the bank threaten foreclosure on his home, suffered humiliation, loss of credit, loss of business reputation, physical injury and will continue to incur loss and damages in the future.

WHEREFORE, Giles M. Lugar moves for judgment against Ronald L. Barbour and Edmondson Oil Company, Inc. for $250,000.00 plus costs, plus attorney's fees.

COUNT II

1. Plaintiff is a resident of Pittsylvania County, Virginia.

2. Edmondson Oil Company, Inc. is a Virginia corporation. Ronald L. Barbour resides in Pittsylvania County, Virginia.

3. Jurisdiction of this court is claimed under §1331 and §1343, Chapter 28, U.S.C. and §1983, Chapter 42, U.S.C. and the amount in controversy exceeds $10,000.00.

4. On April 1, 1977, Ronald L. Barbour, acting for himself and for Edmondson Oil Company, Inc. filed a petition for attachment against Giles M. Lugar and others in the office of the Clerk of the Circuit Court of Pittsylvania County, Virginia. This attachment was filed under the authority of what is now Chapter 20, Code of Va., §§8.01-533, et. seq. (a copy there of filed as

Exhibit A).

5. On April 1, 1977, the Clerk of Pittsylvania County Circuit Court issued the Attachment Order commanding the Sheriff of Pittsylvania County, Virginia, to attach and levy upon the property of Giles M. Lugar found in Pittsylvania County, Virginia (Copy of this order is filed as Exhibit B). The Clerk was acting under the provisions of what are now §§8.01-540 and 8.01-541 of the Code of Va.

6. The Sheriff of Pittsylvania County did levy on and attach the property of Giles M. Lugar on April 1, 1977, April 2, 1977, and April 4, 1977, (A copy of the Sheriff's return is attached as Exhibit C).

7. Prior to filing its Petition for Attachment and the levy and attachment by the Sheriff, neither Edmondson

Oil Company, Inc. nor Ronald L. Barbour filed a bond, nor did they file any security to protect the levy and attachment.

8. At no time prior to the Sheriff being ordered to levy upon and attach the properties of Giles M. Lugar did Edmondson Oil Company, Inc. or Ronald L. Barbour establish before a Judicial Officer a factual basis of the need to resort to this remedy as a means of preventing removal or disruption of assets.

9. The attachment ordered the Sheriff to summons Giles M. Lugar to appear in the Circuit Court of Pittsylvania County at 9:00 a.m., April 18, 1977.

10. The first judicial hearing on the attachment was conducted on April 19, 1977. The court order as a result of

this hearing was not entered until May 4, 1977, thirty-four days after the attachment.

11. Following the provision of §8.01-552 of the Code of Va., on April 5, 1977, Giles M. Lugar filed an affadavit of substantial defense. Ten days later Edmondson Oil Company filed a bond as required by this same code section.

12. The Petition for Attachment (Exhibit A) sworn to by Ronald L. Barbour for Edmondson Oil Company, Inc. contains only conclusory allegations.

13. The Clerk of the Circuit Court of Pittsylvania County, Virginia, and the Sheriff of Pittsylvania County, Virginia, are Constitutional Officers whose duties are mandated by the Constistution and Laws of the State of Virginia.

14. Because of the levy and of the attachment of the Sheriff of Pittsylvania

County, Virginia, Giles M. Lugar was unable to operate his business as Lakewood Truck Center; therefore, he had no income with which to pay his business debts.

15. By order entered May 4, 1977, a copy of which is attached as Exhibit D, the Circuit Court of Pittsylvania County, Virginia, held that Edmondson Oil Company, Inc. had presented no evidence sufficient to establish the grounds for the attachment; had failed to bear its burden of proof; ordered that the attachment be dismissed; and ordered that monies held by a receiver be paid to Mr. Lugar.

16. Ronald L. Barbour is sole owner of Edmondson Oil Company, Inc and Lakewood Truck Center, Inc., both corporations.

17. On May 12, 1977, Lakewood

Truck Center, Inc. filed a petition for temporary injunction against Giles M. Lugar evicting him from his business premises for failure to do business. A copy is attached as Exhibit E.

18. On May 17, 1977, trial was had on a debt owed by Giles M. Lugar to Edmondson Oil Company,Inc. and judgment was entered in the sum of $41,983.13 against Giles M. Lugar.

19. Part of the proof against Giles M. Lugar was that he had made no payment on his debt since April 1, 1977, the date of the attachment.

20. On May 17, 1977, contrary to Virginia law, Ronald L. Barbour and Edmondson Oil Company, Inc. caused the Clerk to issue an Execution on the judgment obtained against Giles M. Lugar on May 17, 1977.

21. On June 21, 1977, Edmondson

Oil Company, Inc. caused another execution to issue on this same indebtedness.

22. On June 23, 1977, Edmondson Oil Company, Inc. caused an additional execution to issue on this same indebtedness.

23. During April, 1977, Giles M. Lugar conducted a physical inventory of his business. This inventory showed the value of the inventory of his business seized by Edmondson Oil Company, Inc. to be $27, 895.42.

24. On July 14, 1977, the Sheriff of Pittsylvania County, Virginia, acting persuant (sic) to the Clerk's executions, sold the inventory of Giles M. Lugar's business.

25. Ronald L. Barbour, owner and President of Lakewood Truck Center and owner and President of Edmondson Oil

Company, Inc. purchased the business inventory of Giles M. Lugar for $49.00.

26. In March, 1976, Giles M. Lugar borrowed $30,000.00 from the Virginia National Bank, guaranteed by the Small Business Administration, secured by a second Deed of Trust on his residence. This money was used as partial payment for his business.

27. Since his business was closed down by the attachment, Giles M. Lugar has been unable to make regular payment to Virginia National Bank. The bank has advised that it will forclose on the Deed of Trust. The Small Business Administration is threatening suit against Mr. Lugar and his wife.

28. At the time his business was closed down by the attachment, Giles M. Lugar had more than $39,000.00 in accounts receivable.

29. Since the attachment Giles M. Lugar has received the benefit of some of his accounts receivable. The balance have been lost.

30. At the present time Giles M. Lugar has business debts which he is unable to pay because of the attachment.

31. At all times alleged herein, Ronald L. Barbour and Edmondson Oil Company, Inc. were willing participants with the State of Virginia; Edmondson Oil Company, Inc. and Ronald L. Barbour were acting under color or state law.

32. Giles M. Lugar has been deprived of his property by state action without due process of law as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

33. The actions described herein of Edmondson Oil Company, Inc. and Ronald L. Barbour, acting under color of

state law, deprived Giles M. Lugar of his right of due process in violation of §1983, Title 42, U.S.C.

34. Because of the malicious, wanton, willful, opressive (sic), unlawful acts of Ronald L. Barbour and Edmondson Oil Company, Inc., Giles M. Lugar has incurred substantial attorney's fees, lost his business assets, is about to lose his home, has been unable to pay his business debts, has had judgment returned against him personally for business debts, has suffered and will suffer in the future grievous mental and physical mental pain and suffering, has suffered and will suffer in the future great humiliation and loss of reputation, has suffered and will suffer in the future damage to his family relationships; has incurred irreparable injury to his credit reputation.

WHEREFORE, Giles M. Lugar moves this Court for compensatory damages of $250,000.00, punitive damages of $250,000.00 and the costs of this action.

COUNT III

1. Edmondson Oil Company, Inc. is a Virginia corporation. Ronald L. Barbour owns all the stock of Edmondson Oil, Inc., is President of Edmondson Oil Company, Inc., and at all times herein was acting as a duly authorized agent of Edmondson Oil Company, Inc.

2. On March 31, 1977, Ronald L. Barbour swore out a Petition for Attachment for Edmondson Oil Company, Inc. against Giles M. Lugar, a copy of which is attached hereto as Exhibit A.

3. On April 1, 1977, the Sheriff of Pittsylvania County, Virginia, levied upon, attached, and seized the business

assets of Giles M. Lugar.

4. At the time he swore to the Petition for Attachment for Edmondson Oil Company, Inc. against Giles M. Lugar, neither Ronald L. Barbour nor Edmondson Oil Company, Inc. had good cause to believe facts which would support the allegations required by §8.01-534. Code of Va.

5. The actions of Edmondson Oil Company, Inc. and Ronald L. Barbour in swearing out the petition for attachment constitutes deliberate oppression, was done maliciously, showed willful disregard for the rights of Giles M. Lugar and demonstrates an intent to unlawfully put Giles M. Lugar out of business.

6. Because of the malicious, wanton, willful, opressive (sic), unlawfu acts of Ronald L. Barbour and Edmondson Oil Company, Inc., Giles M. Lugar has

incurred substantial attorny's fees, lost his business assets, is about to lost his home, has been unable to pay his business debts, has had judgment returned against him personally for business debts, has suffered and will suffer in the future grievous mental and physical mental pain and suffering, has suffered and will suffer in the future great humiliation and loss of reputation, has suffered and will suffer in the future damage to his family relationships. has incurred irreparable injury to his credit reputation.

7. This Court has pendent or ancillary jurisdiction over this count because it states a separate but paral-let cause of action to the Federal questions pled in Counts One and Two.

WHEREFORE, Giles M. Lugar moves

this Court for actual damages of $250,000.00, punitive damages of $250,000.00 plus the costs of this action.

GILES M. LUGAR

By Counsel

Of Counsel

Gary L. Bengston, P.C.

by (s) Gary L. Bengston

Gary L. Bengston
127 Tunstall Road
Danville, Virginia 24541
797-4010

EXHIBIT A
VIRGINIA: IN THE CIRCUIT COURT OF
PITTSYLVANIA COUNTY

EDMONDSON OIL COMPANY, INC.
Plaintiff

v.

GILES M. LUGAR
Principal Defendant

VIRGINIA NATIONAL BANK
Co-Defendant

FIRST VIRGINA BANK, SOUTH
(formerly Schoolfield Bank
and Trust Company)
Co-Defendant

* * * * *

PETITION FOR ATTACHMENT

TO THE HONORABLE W. CARRINGTON THOMPSON, JUDGE OF SAID COURT:

Your petitioner would represent to the Court that the principal defendant, Giles M. Lugar, is justly and truly indebted to plaintiff in the sum of $41,983,12, part of which is due and payable, and a portion of which is due and payable on or after April 1, 1977. The said indebtedness is due by

reason of products and merchandise delivered and sold to Giles M. Lugar by plaintiff. Therefore, plaintiff ought to recover at least the sum of $41,983.12, with interest on $21,983.13 from March 10, 1977, and with interest on the balance from April 1, 1977.

Your petitioner alleges that it has grounds for attachment as follows: Giles M. Lugar is (1) converting or is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities, or other evidences of debt, with intent to hinder and delay his creditors, among them being plaintiff, and (2) has assigned or disposed of or is about to assign or dispose of his estate, or some part thereof, with intent to hinder or delay his creditors, among them being plaintiff.

Your petitioner further believes and

alleges that Giles M. Lugar has on deposit to his credit, control, or ownership, real or beneficial, funds of money, notes or other choses in action, securities or intangibles, in the co-defendant, Virginia National Bank, Danville, Virginia, and First Virginia Bank, South, Danville, Virginia (formerly, Schoolfield Bank & Trust Company, Danville, Virginia), which said co-defendant banks petitioner prays be made a party hereto, and each be required to disclose the nature and amount said property of Giles M. Lugar which is in the actual or constructive possession of each of said co-defendants.

Your petitioner further alleges that defendant, Giles M. Lugar, owns, or has constructive possession of certain tangible and intangible personal

property, to-wit: wreck truck T258-676, service truck GUX-809, petroleum products (gas and diesel fuels), tires, batteries, tubes, miscellaneous motor vehicle parts and accessories, cash registers, trade accounts receivable, credit card receipts and invoices, credit memoranda, checks, ledger account cards, and other equipment, tools, inventory, furnishings, cash on hand, which constitute estate of the said principal defendant.

WHEREFORE, petitioner prays that all the aforesaid property in the hands or possession of the co-defendant, principal defendant, or owned by the principal defendant, be attached by order of this Court; that the same be sold of liquidated to satisfy the claim of petitioner; that Giles M. Lugar be enjoined from any act, or attempt to act in such way as his estate or part there of might not be

available to answer petitioners claim.

Edmondson Oil Company,
Incorporated

(s) H. Victor Millner, Jr.

H. Victor Millner, Jr.
Chatham, Virginia
Counsel

I, Ronald L. Barbour, President of Edmondson Oil Company, Incorporated, a Virginia corporation, being duly sworn, state that I am aware of the facts stated in the foregoing Petition for Attachment, and the same are true to the best of my knowledge and belief.

(s) Ronald L. Barbour
Ronald L. Barbour
President of
Edmondson Oil Company
Incorporated

STATE OF VIRGINIA
COUNTY OF PITTSYLVANIA: to-wit:

Sworn to and subscribed before, Betty Sue Hodges, a Notary Public in and for the County and State aforesaid, this 31st. day of March, 1977.

My commission expires March 2, 1979.

(s)Betty Sue Hodges
Notary Public

EXHIBIT B

COMMONWEALTH OF VIRGINIA,

To the Sheriff of the County of Pittsylvania, Greeting, Edmondson Oil Company, Incorporated, Plaintiff, having filed before me, Clerk of the Circuit Court of Pittsylvania County a petition for an attachment against Giles M. Lugar, et al, principal defendant, to recover of said principal defendant the sum of $41,983.13 with interest on $21,983.13 from 3/10/77 and on balance from 4/1/77 dollars. And the said petition alleging that the plaintiff is entitled to or ought to recover, at the least, the sum of $41,982,13 dollars; and that the said claim became or will become due and payable at the time or times following, to-wit: April 1, 1977 and March 10, 1977, and that the said principal defendant is

removing or is about to remove out of this State with intent to change his domicile; and/or is converting or is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities, or other evidences of debt, with intent to hinder and delay his creditors, among them being plaintiff, and (2) has assigned or disposed of or is about to assign or dispose of his estate, or some part thereof, with intent to hinder or delay his creditors, among them being plaintiff.

THEREFORE, WE COMMAND YOU, That you attach and levy upon the property mentioned and sought to be attached in the said petition, to-wit: wrecker T-258-676, Chevrolet service truck GUX-809, various parts, inventory, tires, batteries, tubes, miscellaneous auto

supplies, petroleum products (gas and diesel fuel) in tanks, accounts receivable, ledger cards, cash registers, tools, checks and so much of the lands, tenements, goods, chattels, moneys and effects of the said principal defendant not exempt from execution as will be sufficient to satisfy the plaintiff's demand.

WE FURTHER COMMAND That you summon the said principal defendant Giles M. Lugar to appear before our said Circuit Court at 9:00 o'clock a.m. on the 18th day of April, 1977, to answer said petition or state grounds of his defense thereto.

AND WE FURTHER COMMAND YOU To summon the said co-defendant Virginia National Bank and First Virginia Bank, South to appear in person at the same time and place and submit to an exami-

nation on oath touching ____ indebtedness to the said principal defendant and the real or personal property of the said principal defendant in its possession, or with the consent of the Court, first obtained, file an answer in writing, under oath, stating whether or not it is so indebted, and if so, the amount and the time of maturity of said debt, and whether there is in its possession any such real or personal property belonging to the said principal defendant and, if so, the nature and value thereof. And that you then and there make return of this writ of attachment and how you have executed the same.

WITNESS, S. W. Swanson, Clerk of said Court, the 1 day of April, 1977.

By: (s) Beth W. Roark

Deputy Clerk

EXHIBIT C

COMMONWEALTH OF VIRGINIA:

To the Sheriff of the County of Pittsylvania, Greeting, Edmondson Oil Company, Incorporated, Plaintiff, having filed before me, Clerk of the Circuit Court of Pittsylvania County a petition for an attachment against Giles M. Lugar, et al, principal defendant, to recover of said principal defendant the sum of $41,983.13 with interest on $21,872.13 from 3/10/77 and on balance from 4/1/77 dollars. And the said petition alleging that the plaintiff is entitled to or ought to recover, at the least, the sum of $41,982.13 dollars; and that the said claim became or will become due and payable at the time or times following to-wit: April 1, 1977 and March 10, 1977, and that the said principal defendant is

removing or is about to remove out of this State with intent to changes his domicile; and/or is converting or is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities, or other evidences of debt, with intent to hinder and delay his creditors, among them being plaintiff, and (2) has assigned or disposed of or is about to assign or dispose of his estate, or some part thereof, with intent to hinder or delay his creditors, among them being plaintiff.

THEREFORE, WE COMMAND YOU, That you attach and levy upon the property mentioned and sought to be attached in the said petition, to-wit: wrecker T-2580787, Chevrolet service truck GUS-809, various parts, inventory, tires, batteries, tubes, miscellaneous auto

supplies, petroleum products (gas and diesel fuel) in tanks, accounts receivable, ledger cards, cash register, tools, checks and so much of the lands, tenements, goods, chattels, moneys and effects of the said principal defendant not exempt from execution as will be sufficient to satisfy the plaintiff's demand.

WE FURTHER COMMAND That you summon the said principal defendant Giles M. Lugar to appear before our said Circuit Court at 9:00 o'clock a.m. on the 18th day of April, 1977, to answer said petition or state grounds of his defense thereto.

AND WE FURTHER COMMAND YOU To summond the said co-defendant Virginia National Bank and First Virginia Bank, South to appear in person at the same time and place and submit to an exami-

nation on oath touching _____ indebtedness to the said principal defendant and the real or personal propety of the said principal defendant in its possession, or with the consent of the Court, first obatined, file an answer in writing, under oath, stating whether or not it is so indebted, and if so, the amount and the time of maturity of said debt, and whether there is in its possession any such real or personal property belonging to the said principal defendant and, if so, the nature and value thereof. And that you then and there make return of this writ of attachment and how you have executed the same.

WITNESS, S. W. Swanson, Clerk of said Court, the 1 day of April, 1977.

By: (s) Beth W. Noark

Deputy Clerk

Executed on the 4th day of April, 1977, by delivering a true copy of the within levy & attachment to Lynwood Lindsey in person within my County.

(s) Michael W. Taylor, Deputy
for T. E. McGregor, Sheriff of
Pittsylvania County, Va.

Executed on the 2nd day of April, 1977, by delivering a true copy of the within levy & attachment to Giles M. Lugar, in person within my County.

(s) Michael W. Taylor, Deputy
for T. E. McGregor, Sheriff of
Pittsylvania County, Va.

Executed on the 4th day of April, 1977, by delivering a true copy of the within levy & attachment to T. M. Collie, in person within my County.

(s) Michael W. Taylor, Deputy
for T. E. McGregor, Sheriff of
Pittsylvania County, Va.

Executed on the 1st. day of April, 1977 by levying on one GMC (860) Wrecker, License T-258-676, Ind. No. D86253748J, Title No. 21566223, one 1970 Chevrolet Service truck, License No. GUX0809, Virginia, Ind. No. CE130B107252, Title No. 21566222, and all equipment on service truck, various parts, inventory, tires, batteries, tubes miscellaneous auto and truck supplies, petroleum products (gas and diesel fuel) in tanks, accounts receivable, ledger cards, cash register and tools, and checks and currency all belonging to Giles M. Lugar and leaving all in his possession. (See itemized list attached)

(s) Michael W. Taylor, Deputy
For T. E. McGregor, Sheriff

Executed on the 4th day of April, 1977 by attaching accounts belonging to Mr. Giles Lugar at the Virginia National Bank and

First Virginia Bank-South.

(s) Michael W. Taylor, Deptuy
For T. E. McGregor, Sheriff

EXHIBIT D

VIRGINIA: IN THE CIRCUIT COURT OF
PITTSYLVANIA COUNTY

EDMONDSON OIL COMPANY, INC.
Plaintiff

v.

GILES M. LUGAR, ET AL
Defendant

* * * * *

ORDER

This cause came on before this Court to be heard on the 19th day of April, 1977, the return date of the levy in this proceeding being on the 18th of April, 1977.

The various parties were present in person and by counsel, and evidence was presented to the Court in support of the attachment proceeding and levy made by the plaintiff, Edmondson Oil Company, Inc. and in defense thereto by the defendant, Giles M. Lugar.

And the Court having heard the evidence and argument of counsel, and being fully advised, is of the opinion that the plaintiff, Edmondson Oil Company, Inc., has failed to bear its burden of proof and has presented no evidence sufficient to establish the grounds of the attachment issued against the defendant, Giles M. Lugar. It is therefore the opinion of the Court that this attachment should be dismissed.

WHEREFORE, it is ORDERED that the attachment and levy made by the plaintiff, Edmondson Oil Company, Inc., against the defendant, Giles M. Lugar, be and hereby is dismissed.

It appearing to the Court further that certain funds are being held by the receiver of the Court, Fidelity American Bank of Chatham, Virginia, on behalf of the parties during the

pendency of the proceeding, and the plaintiff having failed to prove its cause, the receiver is hereby ordered to deliver these funds to the attorneys for the defendant, Giles M. Lugar.

It appearing that there are yet further matters which remain to be determined between the parties, this cause is ordered continued on the docket for such further proceedings as may be proper.

ENTER: 5/4/77

(s) W. C. Thompson

We ask for this Order:

GARY L. BENGSTON, P.C.

By (s) Robert L. Morrison, Jr.
Robert L. Morrison, Jr.
127 Tunstall Road
Danville, VA 24541

Seen and objected to and entered prior to endorcement by

(s) H. Victor Millner, Jr.
H. Victor Millner, Jr.
Counsel for Plaintiff

EXHIBIT E

(Title omitted in printing)

CIRCUIT COURT OF PITTSYLVANIA COUNTY

BILL FOR INJUNCTION

TO THE HONORABLE W. CARRINGTON THOMPSON, JUDGE OF SAID COURT:

Plaintiff, a Virginia corporation, would show to Your Honor the following:

1. That it is the owner of a parcel of real estate in Pittsylvania County, Virginia, on Route 58, East of Danville, Virginia, upon which is situate a truck stop service station and other improvements, all generally known as Lakewood Truck Center.

2. That the premises were leased to Giles M. Lugar, the defendant herein, by a document dated October 1, 1975, which is filed herewith as plaintiff's Exhibit A. Said document is recorded in the Clerk's Office of this Court in Deed Book 615, page 29.

3. That by the terms of the lease, defendant was to pay monthly rent to plaintiff based on gallons of motor fuel delivered to it by the supplier, which was Edmondson Oil Company, Incorporated, in accord with the provisions of the agreement.

4. That on April 1, 1977, Edmondson Oil Company, Incorporated instituted an attachment proceeding against Giles M. Lugar, which was dismissed by order of this court April 29, 1977.

5. That Giles M. Lugar has not operated the facilities under the lease since April 1, 1977, and has in person and by counsel, made it obvious to plaintiff he does not intend to carry on any business in or on the premises, in that he has allowed the condition of the premises to deteriorate; the restaurant which was subleased by defendant

has closed and the renter absconded; defendant has surrendered his fuel tax permit to the Commonwealth; and has sought other employment. In addition, defendant has not paid the rent due on April 1, 1977, in the amount of $751.00; has closed its bank accounts, and refuses to allow plaintiff admission to the premises.

6. That the mutual purpose of the business arrangement envisioned by the lease agreement was the operation by the defendant of a retail truck stop. Plaintiff believes and here alleges that defendant does not intend to operate the business henceforth. Plaintiff further believes and here alleges that defendant is wilfully refraining from utilizing the premises in and for the manner and purpose of the agreement; that defendant is causing and intending to cause

plaintiff hardship and financial loss; that defendant has on the premises a large supply of inventory which is or should be available to plaintiff as security for its rent, miscellaneous damages and repairs beyond ordinary wear and tear; that defendant does not intend to pay for the use of the premises in derogation of the true spirit and intent of the business arrangement.

7. Plaintiff further believes and alleges that since defendant has manifested his intent to abandon the premises and to occupy the premises without compensation, his refusal to honor plaintiff's request for cooperation in obtaining re-entry represents an intentional deprivation of of plaintiff's property rights by defendant, resulting in or likely to result in irreparable damage by virtue of loss of rent, loss of potential purchasers,

vandalism, theft, high insurance rates, and overall loss of value due to continued disuse.

WHEREFORE, plaintiff, being without relief save in a court of equity, prays for a decree enjoining defendant from occupying the said premises and requiring defendant set over and deliver to plaintiff, or its authorized agent full possession of the premises, with such colateral outlines for use or disposition of defendant's personal property as may seem proper; and enjoining defendant from removing or disposing of assets which are or should be available distraint for plaintiff's rent, and further enjoining defendant from intentionally and wilfully depriving plaintiff of it property rights and its right to protect and enhance its property, and for such other relief as the nature of the case may require.

Lakewood Truck Center, Inc.

By Counsel

Vansant & Millner
Chatham, Virginia
Counsel

By (s)_____

(Title omitted in printing)

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA

MOTION TO DISMISS
CIVIL ACTION 78-0020

TO THE HONORABLE JUDGE OF SAID COURT:

The defendants, Edmondson Oil Company and Ronald L. Barbour, jointly, by counsel, move the Court to abstain from hearing and dismiss the complaint in this suit, on the grounds that the complainant challenges the constitutionality of a statute of the Commonwealth of Virginia, and decision on that issue may be rendered unnecessary by a decision of the courts of Virginia as a matter of state law.

Edmondson Oil Company
By Counsel

Ronald L. Barbour
By Counsel

Vansant, Millner & Vines
Chatham, Virginia
Counsel

By _____

Young, Kiser, Haskins,
Mann, Gregory & Young, Ltd.
Martinsville, Virginia
Counsel

By _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

GILES M. LUGAR

V.

EDMONDSON OIL COMPANY, INC.
and
RONALD BARBOUR

MEMORANDUM OPINION AND ORDER

* * * * *

See Petition for Certiorari pp. 32-41

(Rule 30.1)

(Title omitted in printing)

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA

MOTION TO AMEND JUDGMENT
(CIVIL ACTION 78-0020)

TO THE HONORABLE JUDGES OF SAID COURT:

Comes now the plaintiff, Giles M. Lugar, by counsel and files herewith the following motion to amend the judgment of the court entered on the 17th day of July, 1978, dismissing the plaintiff's complaint.

The plaintiff moves the court that the court's order of summary dismissal be revoked and that this matter be reinstated on the docket for further proceedings as provided by law.

The grounds of this motion are:

1. That the court has dismissed this action by reason of failing to state a claim cognizable under Federal law.

2. The complaint filed by the plaintiff specifically alleges involvement of the Commonwealth of Virginia and actions taken under the laws of the Commonwealth of Virginia which would not have been possible without the active and willing cooperation of the Commonwealth and its officers.

3. That the authority cited by the court has grounds for the summary dismissal of the plaintiff's complaint involves action by private individuals without overt action or cooperation by state officials and is not applicable to the facts of this situation.

4. That the parties were not given the opportunity to state their positions and supply evidence and law in support of their positions as required by the Fifth Amendment to the United States Constitution.

Wherefore the plaintiff respectfully moves this honorable court that this court enter its order revoking the judgment order of the 17th day of July, 1978, and providing a time and place for the parties to appear and be heard before making any disposition of this action.

A memorandum in support of this motion will be filed within the ten days next following the filing of this motion.

Respectfully submitted,

GILES M. LUGAR

By Counsel

Of counsel

ROBERT L. MORRISON, JR.

By Robert L. Morrison, Jr.
609 Keen Street - Suite 103
P. O. Box 3741
Danville, VA 24541

(Title omitted in printing)

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA

ORDER
(CIVIL ACTION 78-0020)

Plaintiff filed a Motion to Amend Judgment on July 27, 1978, and certified that he mailed a copy to the defendants' attorneys on July 28, 1978. The judgment which plaintiff seeks to amend was entered on July 17, 1978. According to Rule 59(e) of the Federal Rules of Civil Procedure:

> [a] motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Plaintiff did not serve his motion to amend the judgment until 11 days after entry of the judgment. The court is without the discretion to enlarge the time for serving a motion pursuant to Rule 59(e). See FRCP 6(b). The court

therefore denies plaintiff's motion because it was not timely served. The effect of said denial is to reaffirm the judgment of July 17, 1978, heretofore entered.

Plaintiff, by reason of excusable neglect has moved to this court pursuant to Rule 4(a) of the Rules of Appellate Procedure for an extension of time in which to file a notice of appeal. The court finds that plaintiff has made a showing of excusable neglect and hereby grants plaintiff 30 days from this date in which to file the notice of appeal.

The clerk is directed to send a copy of this order to counsel of record.

ENTER: Joyce F. Witt, Clerk

By: (s) B. Gibson
Deputy Clerk

(s) Ted Dalton
United States District Judge

August 14, 1978

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

GILES M. LUGAR

V.

EDMONDSON OIL COMPANY, INC.
and
RONALD BARBOUR

OPINION

* * * * *

See Petition for Certiorari pp. 42-129

(Rule 30.1)

J U D G M E N T

UNITED STATES COURT OF APPEALS
for the
Fourth Circuit
No. 78-1717

Giles M. Lugar, Appellant

v.

Edmondson Oil Company,
Ronald L. Barbour, Appellees

Appeal from the United States District Court for the Western District of Virginia

This cause came on to be heard on the record from the United States District Court for the Western District of Virginia, and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from , in this cause, be, and the same is hereby, affirmed.

(s) William K. Slate, II
CLERK